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Supreme Court, U.S.
FILED
JAN 19 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1065

In The

Supreme Court of the United States

October Term, 1988

JAMES T. PATTERSON, SR.,

Petitioner,

vs.

ATLANTA BAR ASSOCIATION, ET AL.,

Respondents.

On Petition for Writ of Certiorari to
Supreme Court of Georgia

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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STATEMENT OF THE CASE

This is an attempt to appeal a per curiam affirmance, without opinion, by the Georgia Supreme Court of a trial court order granting summary judgment in favor of Respondents and enjoining further lawsuits by Petitioner without obtaining prior court approval. This has been the saga of the perpetual plaintiff. The repeated abuse of the judicial system is well documented.

Petitioner or his wholly-owned companies have sued 89 defendants including 61 individual parties in 8 prior lawsuits. With the addition of the instant action, Petitioner has now sued a total of 105 defendants including 74 individuals in 9 different lawsuits. Of the 74 parties, 4 have been sued four times, 6 have been sued three times, and 10 have been sued twice. Each of the former lawsuits was frivolous and was dismissed by the court.

Throughout this stream of litigation, the Petitioner has continuously expanded the number of defendants sued. Prior to this suit, the litigation culminated in a suit against 39 defendants, including three federal judges, the State Bar of Georgia, the State of Georgia, 22 attorneys, 10 corporations, and 2 individual defendants seeking recovery for an alleged conspiracy to deprive Petitioner of counsel. The suit was dismissed as frivolous and Rule 11 sanctions in the amount of $4,947 were assessed against Petitioner by the United States District Court for the Northern District of Georgia.

The sanctions were affirmed by the Eleventh Circuit Court of Appeals which held:

> Pro Se filings do not serve as 'an impenetrable shield; for one acting Pro Se has no license to harass

> others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets.'

Patterson v. Akin, 841 F.2d 386 (11th Cir. 1988).

These sanctions did not deter Petitioner. On December 29, 1987, Petitioner instituted this action against 17 defendants, including two bar associations, the State of Georgia, the State Bar of Georgia and 13 individual attorneys. Petitioner *again* alleges a massive conspiracy by attorneys, various bar associations and the State of Georgia to deprive Petitioner of expert testimony and counsel in prior malpractice suits filed against some of the Respondents. Each one of the prior malpractice suits was dismissed and affirmed by the Georgia Court of Appeals. See *Patterson v. Flint*, 182 Ga. App. 650, 356 S.E.2d 670 (1987); *Patterson v. Lanham*, 182 Ga. App. 650, 356 S.E.2d 670 (1987). Except for his imagination, there was no evidence to support any of Petitioner's allegations.

Many of the issues raised by Petitioner have been adjudicated no less than eight times. Nonetheless, the seemingly endless stream of litigation continued. Federal courts have imposed Rule 11 sanctions which had no impact. Thus, the trial court entered an injunction precluding Petitioner from filing further litigation without first obtaining leave of court.

Although technically raised in the Complaint, deterrence of witnesses under 42 U.S.C. § 1985 and the constitutionality of Rule 9.1 were never argued in the courts below. Also, the constitutionality of the trial court's injunction is being raised in this Court for the first time.

The Georgia Supreme Court affirmed the trial court's Order, per curiam without opinion. Although the instant action raises no important questions of federal law, Petitioner has sought certiorari in this Court. Petitioner has cited three possible bases for invoking this Court's jurisdiction. None provides a basis for proceeding in the United States Supreme Court.

SUMMARY OF ARGUMENT

Petitioner seeks review of a per curiam affirmance by the Georgia Supreme Court, without opinion, of a trial court decision granting summary judgment to Respondents and entering an injunction against future lawsuits by Petitioner without prior court approval. Petitioner has failed to demonstrate that any of the considerations for certiorari as outlined in Rule 17 of the Rules of the Supreme Court of the United States is involved.

The Georgia Supreme Court did not decide a federal question in a way which conflicted with the decision of another state court of last resort or of a federal court of appeals. The Georgia Supreme Court did not decide an important question of federal law which has not been, but which should have been, settled by the United States Supreme Court. The Georgia Supreme Court did not decide a federal question in a way which conflicted with applicable decisions of the United States Supreme Court.

The three possible federal question issues raised by Petitioner, even if considered on the merits, do not provide a basis for review in this Court. The constitutionality of Rule 9.1 of the Georgia Civil Practice Act was not

essential to the trial court's decision. Even if it were essential, Petitioner failed to cite a single case in the trial court, the Georgia Supreme Court, or to this Court reflecting that the statute is unconstitutional.

The federal civil rights statutes cited involve the deterrence of witnesses before federal courts. However, the civil actions which provide the basis of Petitioner's claim were in state courts. Moreover, after reviewing the record, the trial court determined, as a federal court had previously, that there was no evidence of any conspiracy by any of the Respondents.

Finally, Petitioner's challenge to the constitutionality of the restraining Order issued by the trial court is being raised for the first time in this Court. Petitioner ignores the repeated case authority and citations which were submitted to the trial court and the Georgia Supreme Court providing clear authority for such restraining orders.

In summary, as has been repeatedly the case, there is no basis in law or in fact for any of the Petitioner's claims. Accordingly, the Petition for Certiorari should be denied.

ARGUMENT

Rules 17.1(b) and 6(c) of the Rules of the Supreme Court of the United States outline the considerations governing the review on certiorari of a decision of a state court of last resort. None of the considerations providing

a basis for review in this Court is present in the instant petition.

First, neither the trial court nor the Supreme Court of Georgia decided a federal question in a way which conflicts with the decision of another state court of last resort or of a federal court of appeals. Petitioner failed in the trial court, the Georgia Supreme Court and in his Petition for Certiorari to provide a single citation to case authority evidencing a conflict between the trial court's decision, as affirmed by the Georgia Supreme Court, and a decision of any other court. Instead, as reflected in the briefs in the courts below, the decisions below are entirely consistent with existing law.

Second, neither the trial court nor the Supreme Court of Georgia decided an important question of federal law which has not been, but should be, settled by the United States Supreme Court or decided a federal question in a way which conflicts with the applicable decisions of the United States Supreme Court. In fact, the trial court did not decide any questions of federal law. Moreover, except for technically raising them in his Complaint, the claims for federal civil rights violations now asserted by Petitioner were never argued or presented to the trial court or the Supreme Court of Georgia for decision. Other than generic references in the Complaint, the only time these claims have been asserted is in the instant Petition for Certiorari to this Court. Thus, as a threshold issue, Petitioner cannot demonstrate any legitimate reason why his Petition for Certiorari should be granted.

Similarly, there are no "special and important reasons" for certiorari in this case. In fact, this case did not

even merit an opinion by the Georgia Supreme Court when it affirmed the trial court. The *only* reason it reached the Georgia Supreme Court was because the case involved the exercise of equitable powers by the trial court which entitled Petitioner to an appeal of right to the Georgia Supreme Court.

Even assuming there were some basis to go beyond this threshold issue of whether the case presented some compelling reason for review, the questions actually raised by Petitioner provide no basis for review. Petitioner identifies six questions presented for review. Only three can possibly be characterized as involving federal questions. These are Question Nos. 2, 3, and 4. The remaining questions involve the application of state law by state courts.

First, Petitioner challenges the constitutionality of Rule 9.1 of the Georgia Civil Practice Act (O.C.G.A. § 9-11-9.1). However, Petitioner failed to provide a single citation reflecting that Rule 9.1 is unconstitutional in the trial court, the Georgia Supreme Court, and his Petition. Moreover, to the extent that a constitutional challenge to Rule 9.1 exists, such a challenge should have been made in the *underlying* cases in which Rule 9.1 was applied against Petitioner. Finally, Rule 9.1 was not necessary to the trial court's decision in this case.

Second, Petitioner alleges a violation of federal civil rights statutes which involve a conspiracy to prevent witnesses from testifying. Of course, the statute cited, 42 U.S.C. § 1985, involves witnesses before *federal* courts. The civil actions in which Petitioner contends expert

witnesses were allegedly deterred were pending in *state* courts.

More importantly, however, the trial court specifically evaluated all evidence before it and concluded, as a prior federal court had, that there was no evidence of a massive conspiracy by attorneys, various bar associations, and the State of Georgia to deprive Petitioner of counsel and an expert witness. Instead, the evidence reflected that the attorneys contacted by Petitioner who refused to represent Petitioner did so for a variety of specific reasons, including the frivolous nature of the actions which Petitioner desired to institute.

Petitioner has made identical allegations of a conspiracy to deprive Petitioner of legal representation in the federal court and was sanctioned pursuant to Rule 11 for asserting such frivolous claims. The fact is that there was no evidence of the Machiavellian conspiracy which Petitioner asserts existed.

Third, Petitioner challenged the constitutionality of the restraining order precluding him from filing any future lawsuits without obtaining prior permission of the court. Petitioner ignores repeated case authority cited to both the trial court and the Georgia Supreme Court which specifically authorizes this remedy. Petitioner also fails to cite a single case which would indicate that the exercise of this inherent power of the court is unconstitutional.

The fact is that the continually abusive conduct by the Petitioner left the courts in Georgia with no alternative. Rule 11 sanctions imposed by federal courts had no impact. Instead, the stream of litigation continued and the number of defendants increased.

It is important to note two things regarding this last issue. First, Petitioner did not challenge the constitutionality of the trial court's Order in either the trial court or the Georgia Supreme Court. Second, the Order entered by the trial court does not deny Petitioner access to the courts. Instead, it only provides that, prior to the clerk accepting a complaint as filed, Petitioner must obtain approval from the trial court of the complaint to be instituted. This simply provides a screening device against future frivolous lawsuits by Petitioner.

CONCLUSION

Hopefully, the constant stream of litigation by Petitioner is about to end. The trial court, after carefully considering all of the evidence before it, determined, as numerous federal courts before it, that the outrageous claims of Petitioner of massive conspiracies to deprive him of his rights were frivolous and without foundation. As a prophylactic device, the court instituted a screening procedure to eliminate the harassment of defendants in the future. The screening device does not deny Petitioner the right to file a lawsuit. Instead, the lawsuit must be reviewed prior to its acceptance by the clerk in order to assure that it is not frivolous.

There was no evidence to support any of the claims raised by Petitioner. The constitutionality of Rule 9.1 was not necessary to the trial court's decision. In addition, there was no case authority or other citation demonstrating any possible basis for holding that the statute was unconstitutional.

The federal civil rights statutes cited involved witnesses before federal courts. The allegations by the Petitioner involved state court actions. In addition, there was no evidence to support any violation of the statutes.

In summary, as has been the case in repeated lawsuits involving over 100 defendants, the Petitioner's claims are without any merit. There is no basis for review in this Court.

Respectfully submitted,

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